

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PLAN FOR CERTAIN § 1983 CASES AGAINST THE CITY OF NEW YORK

Unless otherwise ordered, in civil cases filed by a plaintiff who is represented by counsel against the City of New York (“City”) and/or the New York City Police Department (“NYPD”) or its employees alleging the use of excessive force, false arrest, or malicious prosecution by employees of the NYPD in violation of 42 U.S.C. § 1983, the procedures set forth below (hereinafter the “§ 1983 Plan”) shall apply, except that the procedures and Protective Order identified in paragraphs 3 through 10 shall not apply to class actions, actions brought by six or more plaintiffs, complaints requesting systemic equitable reform, or actions requesting immediate injunctive relief.

1. Service of Releases with Complaint

- a. At the same time that plaintiff serves the complaint, plaintiff must serve on the City the release annexed as Exhibit A (“§ 160.50 Release”) for sealed arrest records for the arrest that is the subject of the complaint, and for a list of all prior arrests. In the case of class actions, plaintiff must serve § 160.50 Releases for the named putative class representatives.
- b. If plaintiff seeks compensation for any physical or mental injury caused by the conduct alleged in the complaint, plaintiff must serve on the City the medical release annexed as Exhibit D (“Medical Release”) for all medical and psychological treatment records for those injuries at the same time that plaintiff serves the § 160.50 Release. Where plaintiff has a pre-existing physical or mental condition that reasonably appears to be related to the injury for which compensation is sought, plaintiff must at that same time serve Medical Releases on the City for all records of treatment for such pre-existing condition(s). Failure to so serve the above-described Medical Release(s) for any physical or mental injury will constitute a waiver of plaintiff’s claims for compensation for that physical or mental injury.

2. Failure to Serve § 160.50 Release

If no § 160.50 Release is served on the City with the complaint, the City will promptly send a letter to plaintiff’s counsel requesting the § 160.50 Release and attaching a copy of the § 1983 Plan. If plaintiff does not respond within three weeks, the City will request the Court to issue the Order to Show Cause annexed as Exhibit B. A sample letter requesting the Order to Show Cause is annexed as Exhibit C.

3. Time to answer

If the § 160.50 Release is served on the City at the time the complaint is first served on a defendant, that defendant will have 80 days from the date of such service to answer the complaint. Any subsequently-served defendant will have the greater of (i) 60 days or (ii) the date by which the first-served defendant must answer, to answer the complaint. If the § 160.50 Release is served on the City after the complaint is first served on a defendant, each defendant will have the greater of (i)

60 days from the date the § 160.50 Release is served on the City or (ii) 60 days after that defendant is served, to answer the complaint. If any defendant moves to dismiss the entire complaint rather than filing an answer, the § 1983 Plan shall be stayed unless the Court orders otherwise.

4. Rule 26(f) Conference and Initial Disclosures

- a. Within 14 days after the first defendant files its answer, the parties shall meet and confer pursuant to Fed. R. Civ. P. 26(f). The parties shall also discuss whether to request that the court (i) refer the case for settlement purposes to a magistrate judge; or (ii) exempt the case from the § 1983 Plan. Any such application must be submitted to the Court no later than 21 days after the first defendant files its answer. Absent any such application from the parties, the case shall automatically proceed under the § 1983 Plan and shall automatically be referred to a mediator selected from the Southern District Mediation Panel who is experienced in § 1983 litigation or § 1983 mediation.
- b. Within 21 days after the first defendant files its answer, the parties shall exchange their initial disclosures.

5. Limited discovery

Within 28 days after the first defendant files its answer, the parties must complete production of the following discovery. No extensions shall be granted. All other discovery is stayed.

- a. The City shall serve on plaintiff:
 - i. Subject to any applicable privileges, any items on the list attached as Exhibit E that were not part of the City's initial disclosures; documents received from the District Attorney's office; and documents obtained from the court file.
 - ii Any CCRB records and the IAB closing report regarding the incident that forms the basis of the complaint. If the incident or the conduct of defendants involved in the incident is the subject of an ongoing CCRB investigation, NYPD investigation or disciplinary proceeding, criminal investigation or outstanding indictment or information, discovery under this request shall be suspended, and the City will produce the investigative records 30 days after the investigation or proceeding has been terminated (whether by completion of the investigation without charges being brought or by disposition of such charges). This suspension shall not apply to documents related to any investigation or proceeding that has concluded.
 - iii. For each named defendant, the CCRB and CPI indices of complaints or incidents that are similar to the incident alleged in the complaint or that raise questions about the defendant's credibility. If the complaint alleges that a defendant officer used excessive force, the City will state whether that defendant officer has been or is on NYPD "force monitoring."

- iv. Any records obtained by the City pursuant to the Medical Releases. Medical records received after this date shall be produced to plaintiff within 7 days of receipt.

b. Plaintiff shall serve on the City:

- i. Any documents identified in Exhibit E; documents received from the District Attorney's office; and documents obtained from the court file.
- ii. Any Medical Records that relate to treatment for which plaintiff has served a Medical Release on the City.

6. Amended Pleadings

The complaint may be amended to name additional defendants without leave of the Court within six weeks after the first defendant files its answer. The filing of the amended complaint shall not affect any of the duties imposed by the § 1983 Plan.

7. Settlement Demand and Offer

Within six weeks after the first defendant files its answer, plaintiff must serve a written settlement demand on the City. The City must respond in writing to plaintiff's demand within 14 days thereafter. The parties shall thereafter engage in settlement negotiations.

8. Mediation or Settlement Conference

If the parties have not filed a Stipulation of Dismissal with the Clerk of Court within three months of the date the first defendant files an answer, the parties shall appear at a mediation session before the Southern District mediator or, if so referred by the Court, at a settlement conference before a magistrate judge. The plaintiff shall attend the mediation or settlement conference. The City's representative must have full authority to settle the case; if the City requires additional approvals in order to settle, the City must have arranged for telephone access to such persons during the mediation or settlement conference.

9. Protective Order

The Protective Order attached as Exhibit F shall be deemed to have been issued in all cases governed by the § 1983 Plan.

10. Preservation

The § 1983 Plan does not relieve any party of its obligation to preserve documents and to issue preservation instructions.

Dated: June 24, 2011

EXHIBIT A

§ 160.50 Release

**DESIGNATION OF AGENT FOR ACCESS TO SEALED
RECORDS PURSUANT TO NYCPL 160.50[1][d]**

I, _____, Date of Birth ____/____/____, SS# _____, pursuant to NYCPL § 160.50[1][d], hereby designate MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, or his authorized representative, as my agent to whom records of the criminal action terminated in my favor entitled People of the State of New York v. _____, Docket No. or Indictment No. _____, in _____ Court, County of _____, State of New York, relating to my arrest on or about _____, may be made available for use in Civil Action _____ (S.D.N.Y.).

I understand that until now the aforesaid records have been sealed pursuant to CPL § 160.50, which permits those records to be made available only (1) to persons designated by me, or (2) to certain other parties specifically designated in that statute.

I further understand that the person designated by me above as a person to whom the records may be made available is not bound by the statutory sealing requirements of CPL § 160.50.

The records to be made available to the person designated above comprise all records and papers relating to my arrest and prosecution in the criminal action identified herein on file with any court, police agency, prosecutor's office or state or local agency that were ordered to be sealed under the provisions of CPL § 160.50.

I further authorize the release of a list from the New York City Police Department that identifies all my prior arrests by date of arrest, charge(s) and disposition, including all sealed arrests.

SIGNATURE

STATE OF NEW YORK)
 : SS.:
COUNTY OF)

On this _____ day of _____, 201_, before me personally came _____, to me known and known to me to be the individual described in and who executed the foregoing instrument, and ___ acknowledged to me that ___ executed the same.

NOTARY PUBLIC

May 18, 2011

EXHIBIT B

Order to Show Cause

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[PTF],

Plaintiff(s),

-v-

[DEF],

Defendant(s).

X

:

:

:

:

:

:

:

X

ORDER TO SHOW
CAUSE

___ Civ. ___ () ()

[NAME], District Judge:

Plaintiff(s) having failed to provide the City of New York ("City") with a signed Designation of Agent for Access to Sealed Records pursuant to NYCPL Section 160.50 ("§ 160.50 Release") as required by the Plan for Certain § 1983 Cases against the City of New York, and counsel for the City having requested the § 160.50 Release by letter mailed to plaintiff's[s'] counsel on [DATE], it is hereby

ORDERED that the plaintiff(s) shall serve and file an affidavit by [DATE], demonstrating good cause, if any, for the failure to provide the City with the signed § 160.50 Release. Failure to demonstrate good cause or to provide to the City the § 160.50 Release by that date may result in dismissal of this action for failure to prosecute.

SO ORDERED:

Dated: New York, New York
Month [], Year

[NAME]

United States District Judge

EXHIBIT C

Letter Requesting Order to Show Cause

The Honorable
United States District Judge

Re:

Your Honor:

I am the attorney assigned to the defense of this action. Pursuant to the Plan for Certain § 1983 Cases against the City of New York (the “§ 1983 Plan”), I request that the Court direct plaintiff to show good cause for the failure to provide defendants with the executed § 160.50 Release required by the § 1983 Plan. The § 160.50 Release is necessary so that the records pertaining to the plaintiff’s claims can be unsealed and the lawsuit can proceed in a timely fashion pursuant to the § 1983 Plan.

On _____, this office forwarded a § 160.50 Release to plaintiff’s counsel along with a copy of the § 1983 Plan. The letter also advised plaintiff’s counsel that the failure to provide the releases described in the § 1983 Plan for medical and psychological treatment records at the same time that the plaintiff serves the § 160.50 Release will result in the waiver of plaintiff’s claims for compensation for any such physical or mental injuries. A copy of that letter is enclosed. To date, we have not received an executed § 160.50 Release or a response to our letter.

Accordingly, it is requested that Your Honor direct plaintiff to show good cause for the failure to provide the § 160.50 Release to this office. For the Court’s convenience, a proposed order to show cause in the form approved by the § 1983 Plan is enclosed.

Respectfully submitted,

cc: Plaintiff’s Counsel

May 18, 2011

EXHIBIT D

Medical Releases

UNITED STATES DISTRICT COURT
DISTRICT OF NEW YORK

-----X

,

Plaintiff,

-against-

The City of New York, et al.,

Defendants.

-----X

**AUTHORIZATION TO
DISCLOSE MEDICAL
INFORMATION**

___ Civ. ___ () ()

TO:

NAME AND ADDRESS OF MEDICAL PROVIDER

I authorize the use and disclosure of _____ health information as described below.

YOU ARE HEREBY AUTHORIZED to furnish to MICHAEL A. CARDOZO, Corporation Counsel of the City of New York, attorney for the defendants in the above-captioned case, or to his authorized representative, a certified copy of the entire medical or hospital record of _____ (Date of Birth: _____; SS #: _____) who was examined or treated in your hospital or by you on or about _____.

The medical record authorized for release includes any and all x-rays of said person and any and all diagnostic tests, studies, or reports of examinations relating to such person.

I understand that the information in my health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment for alcohol, and drug abuse. I only authorize the release of such information to the extent that I have initialed below:

Sexually transmitted diseases _____

AIDS/HIV _____

Behavioral or mental health service _____

Treatment for alcohol and drug abuse _____

This information may be disclosed to and used by the following organization:

The Office of the Corporation Counsel
100 Church Street
New York, NY 10007

for the purpose of the defense of this civil litigation only.

I understand I have the right to revoke this authorization at any time. I understand if I revoke this authorization I must do so in writing and present my written revocation to the health information management department. Unless otherwise revoked, this authorization will expire on the following date, event or condition on the conclusion of the litigation in the above-captioned action. If I fail to specify an expiration date, event or condition, this authorization will expire in six months. I understand that authorizing the disclosure of this health information is voluntary; I can refuse to sign this authorization. I need not sign this form in order to assure treatment. I understand I may inspect or copy the information to be used or disclosed, as provided in 45 CFR 164.524. I understand any disclosure of information carries with it the potential for an unauthorized re-disclosure and the information may not be protected by federal confidentiality rules. If I have questions about disclosure of my health information, I can contact (Name of Medical Provider's Risk Management Office).

Dated: New York, New York
_____, 201__

STATE OF NEW YORK)

: SS:
COUNTY OF _____)

On the _____ day of _____, 201__, before me personally came and appeared _____, to me known and known to me to be the individual described in and who executed the foregoing instrument, and who duly acknowledged to me that __ executed the same.

NOTARY PUBLIC

May 18, 2011



NYCHHC HIPAA Authorization to Disclose Health Information

ALL FIELDS MUST BE COMPLETED

THIS FORM MAY NOT BE USED FOR RESEARCH OR MARKETING, FUNDRAISING OR PUBLIC RELATIONS AUTHORIZATIONS

PATIENT NAME/ADDRESS		DATE OF BIRTH	PATIENT SSN
		MEDICAL RECORD NUMBER	TELEPHONE NUMBER
NAME OF HEALTH PROVIDER TO RELEASE INFORMATION		SPECIFIC INFORMATION TO BE RELEASED: Information Requested _____ Treatment Dates from _____ to _____	
NAME & ADDRESS OF PERSON OR ENTITY TO WHOM INFO. WILL BE SENT		INFORMATION TO BE RELEASED (If the box is checked, you are authorizing the release of that type of information). Please note: unless all of the boxes are checked, we may be unable to process your request. <input type="checkbox"/> Alcohol and/or Substance Abuse Program Information <input type="checkbox"/> Genetic Testing Information <input type="checkbox"/> Mental Health Information <input type="checkbox"/> HIV/AIDS-related Information	
REASON FOR RELEASE OF INFORMATION <input type="checkbox"/> Legal Matter <input type="checkbox"/> Individual's Request <input type="checkbox"/> Other (please specify): _____		WHEN WILL THIS AUTHORIZATION EXPIRE? (Please check one) <input type="checkbox"/> Event: _____ <input type="checkbox"/> On this date: _____	

I, or my authorized representative, authorize the use or disclosure of my medical and/or billing information as I have described on this form.

I understand that my medical and/or billing information could be re-disclosed and no longer protected by federal health information privacy regulations if the recipient(s) described on this form are not required by law to protect the privacy of the information.

I understand that if my medical and/or billing records contain information relating to **ALCOHOL** or **SUBSTANCE ABUSE**, **GENETIC TESTING**, **MENTAL HEALTH**, and/or **CONFIDENTIAL HIV/AIDS RELATED INFORMATION**, this information will not be released to the person(s) I have indicated unless I check the box(es) for this information on this form.

I understand that if I am authorizing the use or disclosure of HIV/AIDS-related information, the recipient(s) is prohibited from using or re-disclosing any HIV/AIDS-related information without my authorization, unless permitted to do so under federal or state law. I also understand that I have a right to request a list of people who may receive or use my HIV/AIDS-related information without authorization. If I experience discrimination because of the use or disclosure of HIV/AIDS-related information, I may contact the New York State Division of Human Rights at 212.480.2493 or the New York City Commission of Human Rights at 212.306.7450. These agencies are responsible for protecting my rights.

I understand that I have a right to refuse to sign this authorization and that my health care, the payment for my health care, and my health care benefits will not be affected if I do not sign this form. I also understand that if I refuse to sign this authorization, NYCHHC cannot honor my request to disclose my medical and/or billing information.

I understand that I have a right to request to inspect and/or receive a copy of the information described on this authorization form by completing a Request for Access Form. I also understand that I have a right to receive a copy of this form after I have signed it.

I understand that if I have signed this authorization form to use or disclose my medical and/or billing information, I have the right to revoke it at any time, except to the extent that NYCHHC has already taken action based on my authorization or that the authorization was obtained as a condition for obtaining insurance coverage.

To revoke this authorization, please contact the facility Health Information Management department processing this request.

I have read this form and all of my questions have been answered. By signing below, I acknowledge that I have read and accept all of the above.

SIGNATURE OF PATIENT OR PERSONAL REPRESENTATIVE	IF NOT PATIENT, PRINT NAME & CONTACT INFORMATION OF PERSONAL REPRESENTATIVE SIGNING FORM
DATE	DESCRIPTION OF PERSONAL REPRESENTATIVE'S AUTHORITY TO ACT ON BEHALF OF PATIENT

If HHC has requested this authorization, the patient or his/her Personal Representative must be provided a copy of this form after it has been signed.

HHC USE ONLY	
Date Received:	Initials of HIM employee processing request:
Date Completed:	Comments:

**AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA**

[This form has been approved by the New York State Department of Health]

Patient Name	Date of Birth	Social Security Number
Patient Address		

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form:

In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996

(HIPAA), I understand that:

1. This authorization may include disclosure of information relating to **ALCOHOL and DRUG ABUSE, MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.

2. If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.

3. I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.

4. I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.

5. Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.

6. **THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).**

7. Name and address of health provider or entity to release this information:

8. Name and address of person(s) or category of person to whom this information will be sent:

9(a). Specific information to be released:

- ☐ Medical Record from (insert date) _____ to (insert date) _____
- ☐ Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.
- ☐ Other: _____

Include: (Indicate by Initialing)

_____ Alcohol/Drug Treatment
_____ Mental Health Information
_____ HIV-Related Information

Authorization to Discuss Health Information

(b) ☐ By initialing here _____ I authorize _____
Initials Name of individual health care provider
to discuss my health information with my attorney, or a governmental agency, listed here:

(Attorney/Firm Name or Governmental Agency Name)

10. Reason for release of information:

- ☐ At request of individual
☐ Other: _____

11. Date or event on which this authorization will expire:

12. If not the patient, name of person signing form:

13. Authority to sign on behalf of patient:

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Signature of patient or representative authorized by law.

Date: _____

* Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.

Instructions for the Use
of the HIPAA-compliant Authorization Form to
Release Health Information Needed for Litigation

This form is a product of a collaborative process between New York State Office of Court Administration, representatives of the medical provider community in New York, and the bench and bar, designed to produce a standard official form that complies with the privacy requirements of the federal Health Insurance Portability and Accountability Act (“HIPAA”) and its implementing regulations, to be used to authorize the release of health information needed for litigation in New York State courts. It can, however, be used more broadly than this and be used before litigation has been commenced, or whenever counsel would find it useful.

The goal was to produce a standard HIPAA-compliant official form to obviate the current disputes which often take place as to whether health information requests made in the course of litigation meet the requirements of the HIPAA Privacy Rule. It should be noted, though, that the form is optional. This form may be filled out on line and downloaded to be signed by hand, or downloaded and filled out entirely on paper.

When filing out Item 11, which requests the date or event when the authorization will expire, the person filing out the form may designate an event such as “at the conclusion of my court case” or provide a specific date amount of time, such as “3 years from this date”.

If a patient seeks to authorize the release of his or her entire medical record, but only from a certain date, the first two boxes in section 9(a) should both be checked, and the relevant date inserted on the first line containing the first box.

EXHIBIT E

NYPD Disclosures

NYPD DISCLOSURES

Pursuant to the Plan for Certain § 1983 Cases against the City of New York, the New York City Police Department (“NYPD”) shall provide to plaintiff(s) the following items:

- 1) NYPD complaint report
- 2) Defendant officer’s memobook entries or daily activity report
- 3) 911 report, including any recordings (if available)
- 4) Radio run reports (audio and written) (if available)
- 5) Stop and frisk reports (e.g., UF250) (if accessible in database)
- 6) Aided reports (or any line-of-duty injury reports)
- 7) Property vouchers
- 8) Evidence vouchers
- 9) Omniform
- 10) Mugshot (if available)
- 11) Reports of medical treatment for plaintiff while in custody
- 12) DAT (for arrests after January 2009)
- 13) Summons (if in possession of Corporation Counsel)
- 14) Handwritten OLBS form (if in possession of Corporation Counsel)

EXHIBIT F

Protective Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

IN RE Plan for Certain § 1983 Cases against the City of
New York

PROTECTIVE ORDER

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WHEREAS, on May 25, 2011, the Court adopted the Plan for Certain
§ 1983 Cases against the City of New York (the “§ 1983 Plan”) as a pilot project; and

WHEREAS, parties in actions governed by the § 1983 Plan will be
required to produce certain documents and information that they may deem to be
confidential or otherwise inappropriate for public disclosure; and

WHEREAS, the parties seek to ensure that the confidentiality of these
documents and information remains protected; and

WHEREAS, good cause therefore exists for the entry of an order pursuant
to Rule 26(c) of the Federal Rules of Civil Procedure;

THE COURT HEREBY ORDERS THAT:

1. As used herein, “Action” shall mean any action that is governed by
the § 1983 Plan.

2. “Confidential Materials” shall mean (a) New York City Police
Department (“NYPD”) personnel and disciplinary-related records, and records of
investigations regarding the conduct of Members of the Service of the NYPD conducted
by the NYPD, the Civilian Complaint Review Board, or other agencies, (b) plaintiff’s

medical records, (c) a list from the New York City Police Department that identifies plaintiff's prior arrests by date of arrest, charge(s) and disposition, including all sealed arrests, and (d) other documents and information that may in good faith, during the pendency of this litigation, be designated "Confidential Material" by the parties or the Court, except that such documents and information shall not be designated "Confidential Materials" to the extent that they relate to the incident(s) underlying the Complaint in the action, are obtained by the parties by subpoena or pursuant to the New York Freedom of Information Law ("FOIL"), or are otherwise publicly available.

3. As used herein, "Producing Party" shall mean the party requesting that a particular document or the information contained therein be deemed confidential, and "Receiving Party" shall mean any party who is not the "Producing Party," as defined herein, for that document or information.

4. A Receiving Party and that party's attorneys shall not use Confidential Materials produced in discovery in the Action for any purpose other than the evaluation, preparation, presentation or settlement of claims or defenses in the Action.

5. Attorneys for a Receiving Party shall not disclose the Confidential Materials to any person other than a party, an attorney of record for that party, or any member of the staff of that attorney's office, except under the following conditions:

- a. Disclosure may be made for the purpose of preparing or presenting a party's claims or defenses in the Action.
- b. Disclosure may also be made to an expert or consultant who has been retained or specially employed by a party's attorneys in anticipation of litigation or preparation for trial of the Action, to a witness at a deposition or in preparation for testimony at a deposition or trial, or to the Court.

- c. Defendants' attorneys may also disclose the Confidential Materials to the New York City Police Department, the New York City Comptroller's Office, and the New York City Mayor's Office, solely in connection with the defense or settlement of this Action.
- d. Before any disclosure is made to a person listed in subparagraph (b) above (other than to the Court or to a witness at a deposition), the Receiving Party's attorney shall provide each such person with a copy of this Protective Order, and such person shall consent in writing, in the form annexed hereto as Exhibit A, not to use the Confidential Materials for any purpose other than in connection with the prosecution, defense, or settlement of the Action and not to make further disclosure of the Confidential Materials, except in testimony taken in the Action. The attorneys for a Receiving Party making such disclosure shall retain the signed consent and furnish a copy to the Producing Party's attorney upon request at a deposition or immediately before trial, although the name of an expert that the Receiving Party does not intend to call as a trial witness may be redacted from such a consent before it is produced.
- e. Disclosure of medical records deemed "Confidential" under this Protective Order may also be made to any individual who provided the treatment described in the records or to a member of the staff of the hospital, doctor's office, or medical provider where the treatment was rendered.

6. The Producing Party or its counsel may designate deposition exhibits or portions of deposition transcripts as Confidential either by: (a) indicating on the record during the deposition that a question relates to Confidential Materials, in which event the reporter will bind the transcript of the designated testimony in a separate volume and mark it as "Confidential Information Governed by Protective Order;" or (b) notifying the reporter and all counsel of record, in writing, within 30 days after a

deposition has concluded, of the specific pages and lines of the transcript that are to be designated “Confidential,” in which event all counsel receiving the transcript will be responsible for marking the copies of the designated transcript in their possession or under their control as directed by the Producing Party or that party’s counsel.

7. If a Receiving Party objects to the designation of any Confidential Materials as confidential, he or she shall state such objection in writing to counsel for the Producing Party, and counsel shall in good faith attempt to resolve such conflict. If the conflict cannot be resolved among counsel, the objecting party shall, within 45 days of the initial objection, request the Court to remove the designation. Any such materials or information shall be treated as Confidential until the parties resolve the conflict or the Court issues its ruling regarding the conflict.


8. Any party seeking to file papers with the Court that incorporate Confidential Materials or reveal the contents thereof shall first make an application to the Court for permission to file under seal the specific portions of those papers disclosing Confidential Materials and shall indicate whether any other party objects to that request. No materials shall be filed under seal unless the Court has issued an order approving the filing, in which event the filing shall follow the District Court rules applicable to filing under seal.

9. Nothing in this Protective Order shall be construed to limit a Producing Party’s use of its own Confidential Materials in any manner, or to limit the use of Confidential Materials or their contents to the extent that they are publicly available or have been provided to a party through other lawful means, such as a FOIL request.

10. This Protective Order will survive the termination of the litigation and will continue to be binding upon all persons to whom Confidential Materials are produced or disclosed. All documents or information that have been deemed confidential pursuant to this order, including all copies and non-conforming copies thereof, shall remain confidential for all time. Once the Action has been resolved, including all appeals, the Confidential Materials, including all copies and non-conforming copies thereof, shall not be used by the Receiving Party for any purpose without prior Court approval.

11. The Court will retain jurisdiction over all persons subject to this Protective Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof. Additionally, the Court reserves the right, in its sole discretion, to modify this Protective Order at any time.

SO ORDERED:

A handwritten signature in black ink, reading "Loretta A. Preska", written over a horizontal line.

LORETTA A. PRESKA

Chief United States District Judge

Dated: June 27, 2011

New York, New York

EXHIBIT A

The undersigned hereby acknowledges that (s)he has read the Protective Order issued in all cases that are governed by the Plan for Certain 1983 Cases Against the City of New York (the “§ 1983 Plan”), which includes the action entitled X v. City of New York, et. al., ## CV ##### (____) (____), and understands the terms thereof. The undersigned agrees not to use the Confidential Materials defined therein for any purpose other than as permitted by the Protective Order, and will not further disclose the Confidential Materials except in testimony taken in this case.

Date

Signature

Print Name